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§ 1045.8 Procedural exemptions.

(a) Exemptions to the procedural provisions of this part may be granted by the Director of Classification.

(b) A request for an exemption shall be made in writing to the Director of Classification and shall provide all relevant facts, justification, and a proposed alternate procedure.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.9 RD classification performance evaluation.

(a) Heads of agencies shall ensure that RD management officials and those RD classifiers whose duties involve the classification or declassification of significant numbers of RD or FRD documents shall have their personnel performance evaluated with respect to classification activities.

(b) Procedures for the evaluation under paragraph (a) of this section may be the same as those in place for NSI related classification activities as required by Executive Order 12958.

Subpart B—Identification of Restricted Data and Formerly Restricted Data Information

§ 1045.10 Purpose and scope.

(a) This subpart implements sections 141 and 142 (42 U.S.C. 2161 and 2162) of the Atomic Energy Act, which provide for Government-wide policies and procedures concerning the classification and declassification of RD and FRD information.

(b) This subpart establishes procedures for classification prohibitions for RD and FRD, describes authorities and procedures for identifying RD and FRD information, and specifies the policies and criteria DOE shall use in determining if nuclear-related information is RD or FRD.

§ 1045.11 Applicability.

This subpart applies to—

(a) Any person with authorized access to RD or FRD;

(b) Any agency with access to RD or FRD; and

(c) Any person who might generate information determined to be RD or FRD.

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§ 1045.12 Authorities.

(a) The Director of Classification may determine whether nuclear-related information is RD.

(b) Except as provided in paragraph (c) of this section, the Chief Health, Safety and Security Officer may declassify RD information.

(c) The Chief Health, Safety and Security Officer, jointly with the DoD, may determine which information in the RD category relating primarily to the military utilization of nuclear weapons may be declassified or placed into the FRD category.

(d) The Chief Health, Safety and Security Officer jointly with the DoD may declassify FRD information.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.13 Classification prohibitions.

In no case shall information be classified RD or FRD in order to:

(a) Conceal violations of law, inefficiency, or administrative error;

(b) Prevent embarrassment to a person, organization, or Agency;

(c) Restrain competition;

(d) Prevent or delay the release of information that does not require protection for national security or non-proliferation reasons;

(e) Unduly restrict dissemination by assigning an improper classification level; or

(f) Prevent or delay the release of information bearing solely on the physical environment or public or worker health and safety.

§ 1045.14 Process for classification and declassification of restricted data and formerly restricted data information.

(a) *Classification of Restricted Data—*

(1) *Submission of Potential RD for Evaluation.* Any authorized holder who believes he or she has information which may be RD shall submit it to an RD classifier for evaluation. The RD classifier shall follow the process described in this paragraph whenever he or she is unable to locate guidance in a classification guide that can be applied to the information. The RD classifier shall forward the information to the Director of Classification via their local classification or security office.

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The DOE Director of Declassification shall determine whether the information is RD within 90 days of receipt by doing the following:

(i) Determine whether the information is already classified RD under current classification guidance; or

(ii) If it is not already classified, determine if the information concerns the design, manufacture, or utilization of nuclear weapons; the production of special nuclear material; or the use of special nuclear material in the production of energy; and

(A) Apply the criteria in §1045.16 and §1045.17 as the basis for determining the appropriate classification; and

(B) Provide notification of the decision by revising applicable classification guides, if appropriate.

(2) *Protection of Potential RD during Evaluation.* Pending a determination by the Director of Classification, potential RD submitted for evaluation by authorized holders shall be protected at a minimum as Confidential Restricted Data.

(b) *Declassification of Restricted Data.* The Chief Health, Safety and Security Officer shall apply the criteria in §1045.16 when determining whether RD may be declassified.

(c) *Classification of Formerly Restricted Data.* The Chief Health, Safety and Security Officer, jointly with the DoD, shall remove information which relates primarily to the military utilization of nuclear weapons from the RD classification category and classify it as FRD.

(d) *Declassification of Formerly Restricted Data.* The Chief Health, Safety and Security Officer, jointly with the DoD, shall apply the criteria in §1045.16 when determining whether FRD may be declassified.

[62 FR 68509, Dec. 31, 1997, as amended at 71 FR 68737, Nov. 28, 2006]

§ 1045.15 Classification and declassification presumptions.

(a) The Director of Classification and the Chief Health, Safety and Security Officer shall consider the presumptions listed in paragraphs (d) and (e) of this section before applying the criteria in §1045.16.

(b) Not all areas of nuclear-related information are covered by the presumptions.

(c) In general, existing information listed in paragraphs (d) and (e) of this section has the classification status indicated. Inclusion of specific existing information in one of the presumption categories does not mean that new information in a category is or is not classified, but only that arguments to differ from the presumed classification status of the information should use the appropriate presumption as a starting point.

(d) The Director of Classification and the Chief Health, Safety and Security Officer shall presume that information in the following areas is unclassified unless application of the criteria in §1045.16 indicates otherwise:

(1) Basic science: mathematics, chemistry, theoretical and experimental physics, engineering, materials science, biology and medicine;

(2) Magnetic confinement fusion technology;

(3) Civilian power reactors, including nuclear fuel cycle information but excluding technologies for uranium enrichment;

(4) Source materials (defined as uranium and thorium and ores containing them);

(5) Fact of use of safety features (e.g., insensitive high explosives, fire resistant pits) to lower the risks and reduce the consequences of nuclear weapon accidents;

(6) Generic weapons effects;

(7) Physical and chemical properties of uranium and plutonium, most of their alloys and compounds, under standard temperature and pressure conditions;

(8) Nuclear fuel reprocessing technology and reactor products not revealing classified production rates or inventories;

(9) The fact, time, location, and yield range (e.g., less than 20 kilotons or 20–150 kilotons) of U.S. nuclear tests;

(10) General descriptions of nuclear material production processes and theory of operation;

(11) DOE special nuclear material aggregate inventories and production rates not revealing size or details concerning the nuclear weapons stockpile;